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Amazon Logistics, Inc.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

SCOOBEEZ, et al.¹,

**Debtors and Debtors in
Possession.**

Affects:

- All Debtors
- ☐ Scoobeez, ONLY
- ☐ Scoobeez Global, Inc., ONLY
- ☐ Scoobur LLC, ONLY

Case No. 2:19-bk-14989-WB
Jointly Administered:
2:19-bk-14991-WB, and 2:19-bk-14997-WB

Chapter 11

**AMAZON LOGISTICS, INC.'S
OPPOSITION TO MOTION TO FILE
UNDER SEAL (DOCKET NO. 365)**

Date: November 18, 2019
Time: 10:00 a.m.
Dept.: United States Bankruptcy Court
Edward Roybal Federal Building
255 E Temple St, Ctrm 1375
Los Angeles CA 90012

Judge: The Hon. Julia W. Brand

Amazon Logistics, Inc. ("Amazon") respectfully submits the following opposition to
Hillair Capital Management, LLC's motion to file documents under seal (Docket No. 365):

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Scoobeez (6339); Scoobeez Global, Inc. (9779); and, Scoobur, LLC (0343). The Debtors' address is 3463 Foothill Boulevard, in Glendale, California 91214.

I.

INTRODUCTION

The present motion should be denied. Hillair Capital Management, LLC (“Hillair”), has wholly failed to overcome the presumption that this Court’s files should be open to inspection by the members of the public, including the parties in interest in this bankruptcy case. There is no evidence that the Freeh Report contains confidential commercial information. Moreover, the Freeh Report likely contains information demonstrating Hillair’s inability to competently oversee the business conducted by Scoobeez, an issue raised by Amazon’s objection to the assumption and assignment of its contract. Finally, the only articulated reason for filing Hillair’s proposed Adequate Assurance Package under seal, that it may provide information to competitive bidders, has evaporated because there are no competitive bidders. As a result, the Freeh Report and Hillair’s Adequate Assurance Package should be filed for public view on this Court’s docket.

II.

STATEMENT OF FACTS

The Debtors have filed a motion seeking authority to sell substantially all of their assets to their secured lender, Hillair. Various parties in interest, including the Debtors’ shareholders, Shahan and Shoshana Ohanessian (collectively, the “Ohanessians”), Peter and Barbara Rosenthal (as Trustees) and Grigori Sedrakyan have filed oppositions to the proposed sale. In addition, Amazon has objected to the proposed assumption and assignment of its contract with the Debtors on the grounds that the contract is not an executory contract, the Debtors’ have not proposed to cure their pre-petition defaults under that contract (or provide adequate assurances that those defaults will be cured) and Hillair has not provided adequate assurances of its future performance under the contract.

In support of their reply to the shareholders’ and Amazon’s objections, Hillair seeks an order from this Court permitting it to file two documents under seal: (a) a report regarding the Ohanessians’ alleged misappropriation of the Debtor’s assets and (b) their tender of adequate assurances of future performance under the Amazon contract. That motion should be denied for the reasons set forth below.

III.

HILLAIR SHOULD NOT BE PERMITTED
TO FILE THE FREEH REPORT UNDER SEAL

A. Factual Background

Hillair has been providing secured financing to the Debtors since October 7, 2016.² As of May 10, 2019, the Debtors owed Hillair in excess of \$11,000,000.³ As might be expected of a lender with such a large “investment” in a borrower, Hillair states that it “has become very familiar with the [Debtors’] business” and has “formed close working relationships with the Debtors’ current management.”⁴ In fact, going beyond the role of a traditional lender, Hillair has been “crucial to supporting ... [the Debtors’] growth.”⁵ The close working relationship that developed between the Debtors and Hillair is consistent with Hillair’s investment strategy, which includes providing “operational support” to its portfolio companies.⁶

According to Hillair, some time prior to March 1, 2017, while Hillair was working closely with the Debtors’ management and providing crucial operational support to that management, Mr. Ohanessian misappropriated approximately \$1,700,000 from the Debtors, without Hillair’s knowledge.⁷ According to the whistleblower report relied upon by Hillair, Hillair was informed about Mr. Ohanessian’s misappropriation of the Debtor’s funds on March 8, 2017.⁸ Although, on March 10, 2017, Mr. Ohanessian promptly resigned as the Debtors’ Chief Executive Officer and as a Director, four days later, in his capacity as majority shareholder, Mr. Ohanessian reinstated himself as the Debtor’s Chief Executive Officer and appointed his wife to the Debtors’ Board of

² Declaration of Scott D. Kaufman (Docket No. 37) at ¶ 7.

³ *Id.* at ¶ 15.

⁴ Declaration of Scott D. Kauffman (Docket No. 364) at ¶ 9.

⁵ *Id.*

⁶ *Id.* at ¶ 8.

⁷ Declaration of Scott D. Kauffman (Docket No. 361) at ¶ 21.

⁸ Declaration of Scott D. Kauffman (Docket No. 37) at Ex. 3.

1 Directors.⁹ Amazingly, Hillair continued support the Debtors, with Mr. Ohanessian in control,
2 for over two years, through the filing of the Debtors' chapter 11 cases, until this Court appointed
3 a Chief Restructuring Officer as required pursuant to Hillair's stipulation with the Debtors to
4 allow the Debtors to continue to use Hillair's cash collateral.¹⁰

5 Following the filing of the Debtors' chapter 11 petitions, Hillair applied to this Court to
6 take a number of examinations pursuant to Bankruptcy Rule 2004 for the purpose, among others,
7 of investigating Mr. Ohanessian's alleged misappropriations.¹¹ On May 14, 2019, this Court
8 granted the foregoing application.¹² After obtaining the documents requested in connection with
9 the Rule 2004 examinations, those documents were provided to the Freeh Group.¹³ "After
10 conducting a thorough forensic analysis of those documents, the Freeh Group prepared the Freeh
11 Report at the direction of Hillair's counsel." *Id.* at 3:28-4:2. The present motion seeks to file that
12 report under seal.

13 **B. The Standard for Filing Documents under Seal**

14 Bankruptcy Code § 107(a) codifies a presumption of public access to all documents filed
15 in a bankruptcy case or with a bankruptcy court. 11 U.S.C. § 107(a). *Gitto v. Worcester Tel. &*
16 *Gazette Corp. (In re Gitto Global Corp.)*, 422 F.3d 1, 7 (1st Cir. 2005). The concept of sealing
17 portions of the Court's files and records is inimical to the strong guiding principal that court
18 records are public documents. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597-598
19 (1978). Public access to judicial records "is of special importance in the bankruptcy arena, as
20 unrestricted access to judicial records fosters confidence among creditors regarding the fairness of
21

22 ⁹ *Hillair Capital Management, LLC's Notice of Motion and Omnibus Motion for Entry of Order Authorizing*
23 *Examinations Pursuant to Federal Rule of Bankruptcy Procedure 2004* (Docket No. 35) at 9:25-26 and 9:27-
10:1.

24 ¹⁰ *See, Declaration Under Penalty of Perjury for Non-Individual Debtors* (Docket No. 1) signed by Mr.
25 Ohanessian as "CEO;" *Hillair Capital Management, LLC's Notice of Motion and Motion to Approve Terms of*
26 *Proposed Stipulation for Interim Use of Cash Collateral* (Docket No. 61) at pg. 16, ¶ 4; *Order Granting*
Debtors' Application for an Order Authorizing and Approving the Employment and Retention of Weiss as Chief
Restructuring Officer of the Debtor Nunc pro Tunc to May 16, 2019 (Docket No. 192).

27 ¹¹ Docket No. 35.

28 ¹² Docket No. 49.

¹³ Motion to Seal at 3:27-28.

1 the bankruptcy system.” *Gitto*, 422 F.3d at 7 (citing *Fern v. United States Trustee (In re*
2 *Crawford)*, 194 F.3d 954, 960 (9th Cir. 1999)). As noted by the Ninth Circuit in *Crawford*, “a
3 blanket open access rule obviously fosters public confidence in a way that a regime shot through
4 with exceptions might not.” *Crawford* at 960.

5 Although there is a strong public policy favoring unrestricted access to judicial records, §
6 107(b) provides two narrow exceptions to that policy: (1) “a trade secret or confidential research,
7 development, or commercial information;” or (2) to protect a person with respect to scandalous or
8 defamatory matter” 11 U.S.C. § 107(b). The *Crawford* court noted Section 107(b)'s two
9 exceptions “are construed narrowly.” *Crawford*, 194 F.3d. at 960 n.8.

10 The party advocating the request to seal under Section 107 has the burden of proof. *In re*
11 *Food Mgmt. Group*, 359 B.R. 543, 561 (Bankr. S.D.N.Y. 2007). Sealing is permitted only on a
12 showing of an “extraordinary circumstance or compelling need” to keep the document private. *Id.*
13 In addition, the movant must demonstrate that “disclosure will work a clearly defined and serious
14 injury...” *Goldstein v. Forbes (In re Cendant Corp)*, 260 F.3d 183, 194 (3d Cir. 2001). The
15 movant must show “sufficient threat of irreparable harm” before information will be sealed, and
16 specificity is essential. *Publiker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3rd Cir. 1984).
17 Broad allegations of harm, without specific examples or articulated reasoning, are insufficient.
18 *Miller v. Indiana Hospital*, 16 F.3d 549, 551 (3rd Cir. 1994).

19 Here, there is no allegation that the information is scandalous or defamatory. Therefore,
20 the motion must seek to seal under § 107(b)(1), trade secret or confidential research, development
21 or commercial information. As there is no indication that disclosure will involve trade secrets or
22 research and development, it appears that Hillair seeks to protect the Freeh Report as commercial
23 information.

24 “Confidential...commercial information” is information that would cause “an unfair
25 advantage to competitors by providing them information as to the commercial operations of the
26 debtor.” *Ad Hoc Protective Comm. for 10 and ½% Debenture Holders v. Intel Corp. (In re Intel*
27 *Corp.)*, 17 B.R. 942, 944 (Bankr. 9th Cir. 1982)). The information must be “reasonably expected
28 to cause the entity commercial injury,” which means that “competitors will gain an unfair

1 advantage." *In re Alterra Healthcare Corp.*, 353 B.R. 66, 73 (Bankr. Del. 2006). The unfair
2 advantage must be "so critical to the operations of the entity seeking the protective order that its
3 disclosure will unfairly benefit that entity's competitors. *Id.* at 76.

4 Here, Hillair attempts to justify its request to seal the Freeh Report in two sentences in the
5 motion, neither of which are supported by an iota of evidence. First, Hillair contends that
6 "disclosure of the information contained in the Freeh Report would essentially provide a road
7 map for any party interested in pursuing claims against the Ohanessians for which the Debtors' do
8 not have exclusive standing rights."¹⁴ The motion does not suggest who those third parties might
9 be, the claims that they may hold or how anyone other than the Debtors could have claims against
10 Mr. Ohanessian arising from Mr. Ohanessian's alleged misappropriation of the Debtors' funds.
11 The motion also fails to show that Hillair has any claims against Mr. Ohanessian such that
12 disclosure of the Freeh Report would advantage anyone in preference to Hillair in seeking to
13 recover on such claims. Second, Hillair states that "the disclosure of the information contained in
14 the Freeh Report will enable the Ohanessians to take actions that may minimize their liability or
15 potential recovery to the detriment of the Debtors' estates."¹⁵ Since the Freeh Report details
16 findings based upon the Ohanessian's past actions, it is hard to see how disclosure of the report
17 would enable the Ohanessians to minimize any liability that they may have as a result of those
18 past actions or jeopardize the estates' recovery on any claim that the estates may elect to pursue.

19 There is simply no evidence demonstrating that disclosure of the Freeh Report would
20 work any competitive harm on Hillair. Rather, this Court has been presented with "Broad
21 allegations of harm, without specific examples or articulated reasoning." *Indiana Hospital*, 16
22 F.3d at 551. Such arguments are insufficient to support a sealing order. *Id.*

23 The contents of the Freeh Report may be material to this Court's consideration of the
24 adequacy of Hillair's offers of adequate assurances of future performance of Scoobeez's contract
25 with Amazon, assuming that the Court concludes that the contract is otherwise assumable and
26 assignable (which Amazon disputes). To date, we know that Hillair worked closely with the

27 ¹⁴ Motion to Seal at 6:9-11

28 ¹⁵ Motion to Seal at 6:11-13.

1 Debtors' management from the inception of its loan in 2016 through the date upon which the
2 Debtors filed their chapter 11 petitions. We also know that Hillair became aware of Mr.
3 Ohanessian's alleged misappropriation of approximately \$1,700,000 in March 2017. We also
4 know that, despite that knowledge, other than a four day hiatus in March 2017, Hillair continued
5 to provide operational and financial support to the Debtors with Mr. Ohanessian acting as the
6 Debtors' Chief Executive Officer. On the face of things, these facts suggest that Hillair has
7 extremely poor judgment and is not qualified to oversee the business operations that it now seeks
8 to acquire. Notwithstanding, Hillair now urges this Court to ignore the provisions in Amazon's
9 contract that give it a unilateral right to terminate the contract and force Amazon to do business
10 with Hillair. It is apparent that the Freeh Report will provide substantial insight into Mr.
11 Ohanessian's activities and Hillair's lack of attention to those activities. Amazon and the other
12 parties in interest in this bankruptcy case should be provided with the benefits of that insight.
13 Hillair's request to file the Freeh Report under seal should be denied.

14 **IV.**

15 **HILLAIR SHOULD NOT BE PERMITTED TO FILE**

16 **THE "ADEQUATE PROTECTION PACKAGE" UNDER SEAL**

17 The only justification in the motion for filing the "Adequate Protection Package" under
18 seal is that the disclosure of that information "would provide any other interested bidder in (*sic*)
19 confidential financial and operational information related to Hillair's bid. Such disclosure may
20 prejudice Hillair in connection with the auction."¹⁶ Because there were no Qualified Bidders
21 under this Court's bidding procedures order, there was no auction and there are no other bidders
22 for the assets that Hillair proposes to acquire. As a result, even assuming that Hillair's articulated
23 reason for seeking to seal the Adequate Protection Package had been sufficient when the motion
24 was filed (which it is not), there is no reason today to permit the Adequate Protection Package to
25 be filed under seal.

26
27
28 ¹⁶ Motion to Seal at 6:14-16.

V.

CONCLUSION

For the foregoing reasons, Hillair's motion to file the Freeh Report and its proposed Adequate Protection Package under seal should be denied.

Dated: November 4, 2019

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Richard W. Esterkin
Richard W. Esterkin

Attorneys for Amazon Logistics, Inc.

CERTIFICATE OF SERVICE FORM
FOR ELECTRONIC FILINGS

I hereby certify that on November 4, 2019, I electronically filed the foregoing document,
Amazon Logistics, Inc.'s Opposition to Motion to File Under Seal (Docket No. 365), with the
Clerk of the United States Bankruptcy Court, Central District of California, Los Angeles
Division, using the CM/ECF system, which will send notification of such filing to those parties
registered to receive notice on this matter.



Renee Robles

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Morgan Lewis & Bockius, LLP
300 S Grand Ave Fl 22, Los Angeles CA 90071-3132

A true and correct copy of the foregoing document entitled (*specify*): Amazon Logistics, Inc.'s Opposition to Motion to
File Under Seal (Docket No. 365)

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 11/04/2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Service List, Attached.

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 11/04/2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

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☐ Service information continued on attached page


3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 11/04/2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Hon. Julia W. Brand, Suite 1382
U.S. Bankruptcy Court, Roybal Federal Building
255 E Temple St, Los Angeles CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

11/04/2019 Renee Robles
Date Printed Name


Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

2:19-bk-14989-WB Service List:

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2:19-bk-14989-WB Notice will not be electronically mailed to:

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